

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

WO

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ARIZONA

Herbert Jalowsky, M.D., an individual,)
Plaintiff,)
vs.)
Provident Life and Accident Insurance)
Co., a Tennessee corporation; Unum)
Group, a Delaware corporation,)
Defendants.)

No. CV 18-279-TUC-CKJ (LAB)

ORDER

Pending before the court is the defendants’ motion, filed on August 28, 2020, for reconsideration of this court’s prior order granting, in part, the defendants’ motion to compel discovery or, in the alternative, to preclude the plaintiff, Jalowsky, from introducing pain-related evidence at trial. (Doc. 414)

Previously, on August 17, 2020, this court granted, in part, the defendants’ motion to compel discovery from the plaintiff seeking to ascertain his level of physical activity. (Doc. 405) The court held that Jalowsky must provide some of the requested discovery, but not all, because for some of the discovery requests, “the burden or expense of the proposed discovery outweighs its likely benefit.” Fed.R.Civ.P. 26(b)(1); (Doc. 405) The defendants argue in the pending motion that this court was wrong to conclude that the issue of pain was “peripheral.” (Doc. 414, p. 1) On the contrary, they argue, it is “a central issue in this action.” *Id.*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Discussion

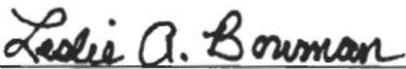
A motion for reconsideration is appropriate where “the district court (1) is presented with newly discovered evidence [that could not have been presented earlier with reasonable diligence], (2) committed clear error or the initial decision was manifestly unjust, or (3) if there is an intervening change in controlling law.” *School Dist. No. 1J, Multnomah County v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993); *see also* LRCiv 7.2(g) (“The Court will ordinarily deny a motion for reconsideration of an Order absent a showing of manifest error or a showing of new facts or legal authority that could not have been brought to its attention earlier with reasonable diligence.”). A motion for reconsideration should not be used for the purpose of asking a court “to rethink what the court had already thought through – rightly or wrongly.” *Defenders of Wildlife v. Browner*, 909 F. Supp. 1342, 1351 (D.Ariz. 1995) (punctuation modified). A motion for reconsideration “may *not* be used to raise arguments or present evidence for the first time when they could reasonably have been raised earlier in the litigation.” *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (emphasis in original). Nor may a motion for reconsideration repeat any argument previously made in support of or in opposition to a motion. *Motorola, Inc. v. J.B. Rodgers Mech. Contractors, Inc.*, 215 F.R.D. 581, 586 (D. Ariz. 2003); LRCiv 7.2(g)(1). Mere disagreement with a previous order is an insufficient basis for reconsideration. *See Leong v. Hilton Hotels Corp.*, 689 F. Supp. 1572, 1573 (D. Haw. 1988).

The defendants argue that “it is manifestly unjust to allow Plaintiff to pursue the theory that the car accident aggravated his chronic pain and therefore contributes to his MCI, but not to require Plaintiff to answer discovery related to that theory.” (Doc. 414, p. 6) This court, however, has required Plaintiff to answer discovery related to that theory. (Doc. 405) It has denied *additional* discovery because “the burden or expense of the proposed discovery outweighs its likely benefit.” Fed.R.Civ.P. 26(b)(1); (Doc. 405) The pending motion asks the court to rethink something that it has already thought through. Accordingly,

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IT IS ORDERED that the defendants' motion, filed on August 28, 2020, for reconsideration of this court's prior order granting, in part, the defendants' motion to compel discovery or, in the alternative, to preclude the plaintiff, Jalowsky, from introducing pain-related evidence at trial is DENIED. (Doc. 414) The motion for reconsideration is DENIED. The motion to preclude evidence at trial is DENIED as UNRIPE. The District Court will set a schedule for filing motions in limine when the trial date is set.

DATED this 10th day of September, 2020.



Leslie A. Bowman
United States Magistrate Judge